The opinion was delivered by Mr. Justice Holmes, who several years ago, on the Massachusetts bench, concurred in a contrary result, in a case substantially similar except for the fact that there no stock had been issued at the time of the alleged assent.[14] Upon this narrow difference the present decision appears unnecessarily technical, and is opposed to the doctrine of three important jurisdictions,[15] in one of which the same facts were presented against a different defendant.[16] Moreover, to hold broadly that assent by any board at any time waives the fiduciary obligation, seems deplorably to cripple a beneficent and well-established rule.

LIABILITY FOR INTERFERING WITH TRADING STAMP CONTRACTS. — The giving of trading stamps by merchants to their customers as a premium upon cash purchases is one of the more recently developed methods of advertising. The merchant buys these stamps from an issuing company which contracts, among other things, to redeem in goods of various sorts all stamps regularly issued to customers when they are presented in lots of a certain number. The right of a holder of stamps regularly issued to redemption arises from the contract between the stamp company and the merchant, of which the stamp holder is a beneficiary; or by a fulfilling of the conditions of any sufficiently specific public offer to a unilateral contract which the stamp company may make. The trading stamp, therefore, like a railroad[1] or lottery[2] ticket, is a contractual obligation, a chose in action. At first the stamps were issued with no limitation upon their transferability, and the public accepted them as transferable obligations. As in the case of promissory notes and railroad tickets,[3] the courts took cognizance of this general understanding and assumed that the stamps were transferable.[4] Such stamps are therefore analogous to promissory or bank notes payable to bearer, and like them assignable, not by giving the assignee a right to sue in the name of the assignor, but by a true transference and extinguishment of the assignor's right. The ownership of an obligation is governed by the same rules of law as the ownership of a chattel, and any such stamp holder therefore should be free to transfer his property right by any legal means in his power. Most courts, however, have at the suit of the stamp company enjoined merchants who are not subscribers to the company's scheme from purchasing stamps from holders and giving them as premiums to their customers.[5] But if our analysis of the nature of the trad-

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14 Hayward *v.* Leeson, 176 Mass. 310.

15 Pietsch *v.* Milbrath, 123 Wis. 647; New Sombrero Phosphate Co. *v.* Erlanger, *supra;* Old Dominion, etc., Co. *v.* Bigelow, 188 Mass. 315. *Contra,* Tompkins *v.* Sperry, Jones & Co., 96 Md. 560.

16 Old Dominion, etc., Co. *v.* Bigelow, *supra.*

1 There is a lack of harmony among the cases, but the modern tendency is to hold that a railroad ticket is a contract. See 1 HARV. L. REV. 17.

2 Homer *v.* Whitman, 15 Mass. 132; and see Shankland *v.* Corporation of Washington, 5 Pet. (U. S.) 390. Although the trading stamp is similar in its nature to the lottery ticket, the trading stamp scheme is unlike a lottery in that it involves no element of chance. Recent statutes forbidding the trading stamp business have therefore been universally declared unconstitutional by the courts. Madden *v.* Dycker, 72 N. Y. App. Div. 308; Winston *v.* Beeson, 135 N. C. 271.

3 Sleeper *v.* R. R. Co., 100 Pa. St. 259.

4 Sperry & Hutchinson Co. *v.* Hertzberg, 69 N. J. Eq. 264, 272.

5 Sperry & Hutchinson Co. *v.* Mechanics' Clothing Co., 135 Fed. 833; Sperry & Hutchinson Co. *v.* Temple, 137 Fed. 992; S. & H. Co. *v.* Brady, 134 Fed. 691; S. & H. Co. *v.* Asch, 145 Fed. 659. *Contra,* S. & H. Co. *v.* Hertzberg, *supra,* and see S. & H. Co. *v.* Mechanics' Clothing Co., 128 Fed. 800; *ibid.* 1015

ing stamp is correct, in the absence of fraud or interference with the contracts between the stamp company and its subscribers, the cases seem wrong in forbidding this particular transfer of property, even though it was not contemplated by the plaintiff and may injure his business, nor, to support such rulings, does it seem possible to raise any implied obligation that the stamps shall not be used again for advertising purposes.

In a recent case non-transferable stamps were issued, large numbers of which the defendant purchased or exchanged for its own stamps. The stamps thus obtained were sold to brokers, redeemed in large lots, or resold to the plaintiff's subscribers at a lower rate than the plaintiff could sell them. The court enjoined such trafficking in the plaintiff's stamps. *Sperry & Hutchinson Co.* v. *Louis Weber & Co.*, 161 Fed. 219 (Circ. Ct., N. D. Ill.). The issuing company may place a condition of non-transferability upon the redemption of its stamps, as a railroad may upon the use of an excursion ticket. The purchaser of such a railroad ticket makes a formal, as distinguished from a consensual, contract not to transfer it, and the courts have enjoined ticket-scalpers from interfering in such a contract.[6] It is impossible to find any such enforceable contract between the customer who receives a trading stamp and the stamp company: they are never in privity, since the merchant does not act as agent for the stamp company. But such a formal contract is made between the merchant and his customer — in return for the premium the purchaser agrees to abide by the conditions under which it is given. The equitable jurisdiction to enjoin interference in this contract would seem to be clear.[7] Even though we discard this theory, it would seem that the presentation of non-transferable stamps for redemption by any but the original holders is a fraud upon the stamp company. And the perpetration of such fraud should be enjoined where, as in the present case, the legal remedy is inadequate by reason of the impossibility of distinguishing *bona-fide* holders of stamps from transferees.

THE IMPEACHMENT BY A STATE COURT OF THE JUDGMENT OF A SISTER STATE. — The question as to how far the judgments of the courts of a foreign country should be regarded as conclusive of the rights and liabilities thus determined has been the source of much controversy among jurists. It is recognized by all that some effect should be given such judgments, but without legislative sanction the authorities generally have hesitated to accept them as conclusive. The early English authorities are not harmonious. By some a foreign judgment was regarded as conclusive; by others, as merely *prima facie* evidence of an obligation enforceable in England, to be rebutted by showing the injustice of the claim, its fraudulent inception, or the lack of jurisdiction in the court over either the cause or the parties.[1] It seems to be settled in England now, however, that a foreign judgment, if rendered by a court of competent jurisdiction and not fraudulently obtained, is conclusive.[2] In this country the courts at first almost universally followed those English authorities which regarded such judgments as inconclusive and only *prima facie* evidence of the obligation. They did not, however, de-

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[6] Ill. Cent. Ry. Co. *v.* Caffrey, 128 Fed. 770; Bitterman *v.* Louisville, etc., Ry. Co., 207 U. S. 205. See 21 HARV. L. REV. 365.
[7] Angle *v.* Chicago, etc., Ry. Co., 151 U. S. 1.

[1] Story, Conflict of Laws, 8 ed., 826, 827 and cases cited.
[2] Bank of Australasia *v.* Nias, 16 Q. B. 717; Goddard *v.* Gray, L. R. 6 Q. B. 139.